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ADMINISTRATION.

1. *Administrator—Final settlement, continuance of—Notification, failure of—Effect of.*—In 1860 an administrator gave statutory notice of a final settlement at the next term of Probate Court. At that term he filed his settlement, but on his motion, the same was continued till the next term. No further notice was taken of the settlement till 1870, when the administrator, without further notification, withdrew his final settlement and made a different and corrected one. *Held,* that the latter settlement had no binding force on the parties interested in the estate.—Brashears vs Hicklin, 102.

2. *Administrators—Final settlement—When set aside.*—A final settlement, made by an administrator, has the force and effect of a judgment, and can only be set aside or overcome on the ground that it was fraudulently procured; mere illegal allowances, unless obtained by fraud, are no ground for impeaching or setting it aside.—Lewis v. Williams, Adm'r of Henry, 200.

3. *Administrators—Acts done before appointment—Innocent parties.*—Acts done by an administrator, prior to his appointment, will be validated by his subsequent appointment, except where the rights of innocent parties intervene.—Wilson v. Wilson, 213.

4. *Executors—Deed—Subsequent probate of will.*—A will giving power of sale vests the title in the executor at the time of the testator's death, and his deed of the property, made before probate of the will, is a good conveyance, provided the will be subsequently probated.—*Id.*

5. *Executors—Wills—Direction to support family of testator—Supplies furnished—Suit for.*—A. by his will directed his executors to support his family till his estate should be divided. B., a merchant, sold certain supplies to the widow, and sued the executors therefor. *Held,* that to allow such a suit would subvert the will of the testator, who confided in his executors to furnish the family with reasonable funds; that if they failed to do so, they could be compelled to perform this duty by a court of equity, perhaps by the Probate Court itself.—Reid vs. Porter, 265.

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8. *Administration—Witness "to contract or cause of action."*—In a suit by an administrator *de bonis non,* against the sureties of the former administrator or executor, to recover monies, charged to have come into the hands of the former administrator as such, and not accounted for by him, *Held,* 1st. That it is no defense to said action, for the sureties to show that certain demands had been allowed against the estate which were barred by the statute of limitations. The question whether such claims were properly allowed, is wholly immaterial and collateral to the issues to be tried, and are not proper subjects of inquiry in the cause.

ADMINISTRATION, continued.

2nd. That the testimony of the administrator of the former who executor is then dead, was competent to prove payments made by the deceased executor during his life-time, on claims or demands against the estate; and as to what was said by said executor at the time of said payments. The subject matter of such testimony was not the contract or cause of action then in issue, nor was the witness the other party to the action.—*Ibid.*

9. *Administrator—Demand allowed by collusion—Sale of lands—Bill in equity to postpone.*—Where a claim against an estate is allowed, and land belonging thereto is about to be sold to satisfy the allowance, through fraud and collusion between the administrator and the claimant, a bill in equity by the heirs to set aside the allowance and postpone the sale is a proper remedy, notwithstanding that an action of damages would lie against the administrator on his bond. Such action would sound only in damages and would fail to reach the land. Jurisdiction by a court of equity is not ousted, in such case, because a remedy exists at law.—State v. Caldwell, 536.

10. *Administrator—Suit by—Defendant cannot as surety set off what notes—Construction of statute.*—In suit by an administrator, defendant under the statute (Wagn. Stat., 1274, § 3) cannot set off notes of the intestate, upon which defendant was surety, where the notes remained due and unpaid at the decease, although they were duly probated and after probate paid by defendant, and, although the estate of deceased was insolvent. Defendant did not come within the purview of the statute, for he did not own the notes, and was not a creditor at the time of the intestate's death.—White v. Henley, 592.

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1. *Arbitration and award—How far conclusive.*—The award of arbitrators is conclusive as to all matters within the scope of the authority given them in the submission, but if they assume to act on questions not submitted, or fail to follow the directions in the submission in a material point, their award, in reference to such matters, will not be binding either on questions of law or fact.—Squires v. Anderson, 193.

2. *Arbitration, submission to—Construction of—Permanent improvements—Vines.*—A. and B. were partners in business, A. furnishing the land to be cultivated and the money necessary, B. furnishing his labor. By the terms of a submission to arbitration between them, in order to settle up the partnership, A. was to be charged for all permanent improvements made on his land by the firm. *Held*, that the increased value of vines, due to their growth during the existence of the partnership, which were growing on the farm before the partnership was formed, was not chargeable against him as permanent improvements made by the firm.— *Id.*

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1. *Attachment—Plea in abatement—Appeal will not lie from.*—Under the present statute, (Wagn. Stat. 189-90, § 42,) an appeal will not lie from a judgment on a plea in abatement. [Davis v. Perry, 46 Mo., 449.] Jones v. Snodgrass, 598.

See Bonds, Judicial 2, 3; Practice, civil, 8.

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BILLS AND NOTES.

1. *Bills and Notes—Maker—Indorser—Demand and notice of dishonor.*—To bind an indorser on a note, due demand and notice of dishonor must be proved, but the maker thereof is liable, whether there be a demand of payment or not Napper v. Blank, 131.

2. *Notes and Bills of Exchange—Criminal prosecution, dismissal of.—Indebtedness.* A note given to secure the dismissal of a criminal prosecution for embezzlement, whether the agreement be express or implied, is void, though it is made for the amount of money alleged to have been embezzled. Sumner v. Summers, 340.

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BONDS, JUDICIAL.

1. *Practice, civil—Trials—Bonds, loss of—Parol testimony.*—When a bond is given in a cause and is afterwards lost, its contents may be proved in that cause by parol testimony. Compton v. Arnold, 147.

2. *Attachment bond—Suit on—Seal.*—A seal or a scrawl by way of seal, is an essential requisite to an attachment bond filed in the circuit court. State of Missouri v. Early, 338.

3. *Practice, civil—Trials—Evidence—Bonds—Lack of seal, how objected to—Pleadings.*—When suit is brought on a bond executed by the defendant, the objection to its introduction in evidence, on the ground that there is no seal to it, will not be considered, unless its execution was denied in the answer upon oath. (Wagn. Stat. 1046, § 45.) *Id.*

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BONDS, RAILROAD.

1. *Bonds, railroad—Coupons—Suit on, in U. S. Courts—Jurisdiction—Aggregate amount.*—In suit to recover coupons on railroad bonds issued by a County Court, the question, whether the amount sued on is sufficient to bring it within jurisdiction of the Circuit Court, is to be determined by the aggregate amount of the coupons.—Smith v. Clark County, 58.

2. *Railroad bonds—Coupons—Negotiability of.*—Railroad coupons are not rendered non-negotiable by the fact that they are not made payable to a particular person.—*Id.*

3. *Bonds—Railroad—County—Subscription—Popular election—Subscription, right of, a franchise—Repeal of special by general law—Bonds, recitals in—Innocent holder—Estoppel, etc.*—Section 14 of the North Mo. R. R. Charter of 1851 authorized counties along the line of the road to subscribe thereto, without the sanction of a popular vote. Section 10 of the act of 1857, creating the Alexandria & Bloomfield Railroad Company, (Sess. Acts 1856-7, p. 94,) made said section 14 a part of the latter charter. *Held,*

1st. that the right of subscription, conferred by section 14, was not exclusively that of the counties, but was a privilege of the railroads, and might be transferred, by section 10 aforesaid, to the A. & B. R. R. Co.

2nd. That bonds issued in 1865 by the County Court of Clark county, in aid of the A. & B. R. R. Co., under the authority conferred by the charter of 1857 were valid notwithstanding the inhibition of the act of March 23rd, 1861 (Sess. Acts 1861, p. 60, § 1). The last named, being a general act, did not repeal the former and special one.

3rd. Although said bonds on their face recited, that they were issued under the general act for the formation of railroads, passed in 1855, and that act, as amended by the acts of 1860 and 1861, required a popular vote to authorize the issue of the bonds, such recitals would not estop an innocent holder from showing, that, in point of fact, the bonds were issued under the special act of 1857.—*Id.*

PER NAPTON, JUDGE.

4. *Bonds, county—Railroad—Bona fide holder—Popular vote—Recitals as to—Defenses.*—The act of 1855, and the amendments thereto, required a popular vote to authorize the issue of Clark county railroad bonds; and the bonds recited, that they were issued as authorized by the act. *Held,* that the holder would have a right to presume, that the acts had been complied with; and in suit on the bond, by a *bona fide* holder without actual notice of the facts, the defense, that no such popular vote had been taken, would be unavailing.—*Id.*

ON MOTION FOR REHEARING.—PER CURIAM.

Held, that the recitals of the bonds would not be conclusive upon the county as to the fact of the election.—*Id.*

5. *Bonds county—Railroad—Legal existence of Railroad—Issue as to, not to be raised collaterally—Quo Warranto, etc.*—In suit on a bond given by a County Court in aid of a subscription for a railroad, the question, whether the corporation had a legal existence, cannot be raised. The only proper way to test this question would be by *quo warranto* on the part of the State.—*Id.*

6. *Railroads—Subscriptions to—County bonds—Charter—Subsequent general statutes.*—A provision in the charter of a railroad company, authorizing county courts to subscribe stock to such railroad without a vote of the people, is not repealed by subsequent general laws, nor by the subsequent adoption of the present Constitution. [Smith v. Clark County, *ante*, p. 58.]—State, *ex rel.* v. Greene County, 540.

7. *Railroads—Counties and municipal bodies, subscription to—Privilege.*—The power conceded to counties or other municipal bodies by a railroad charter, to take and subscribe stock in such railroad, was intended as a privilege to the railroad.—*Id.*

8. *Railroads—Consolidation—Effect of.*—When several railroads consolidate, the new road shall stand in their place, and possess the rights, power and privileges they had severally enjoyed in the portions of the road which had previously belonged to them.—*Id.*

9. *Railroads—Bonds, county—Kansas City & Cameron R. R.—Consolidation—Branch road—Act of March 21, 1868.*—The action of the directors of the Kansas City & Cameron R. R., formerly the Kansas City, Galveston & Lake Superior R. R., in determining to build a branch R. R., in accordance with the act of March 21, 1868, and the charter of the Kansas City, Galveston & Lake Superior R. R., and the acts amendatory thereto, followed by the partial building thereof, and followed by their own consolidation with the Han. & St. Joseph R. R., did not deprive such branch road of the privilege of subscriptions from county courts of the counties along the line of the road without a prior vote of the people therein, such privileges being contained in the original charter of the Kansas City, Galveston & Lake Superior R. R.; such branch road was authorized by and was built in conformity to the provisions of the original charter, and, under the act of March 21, 1868, though nominally a branch, was in reality a distinct and separate road from the Hannibal & St. Joseph R.—R.—*Id.*

10. *Railroads, subscription to—Counties—Consolidation—Different enterprise.*—A power given to a county to subscribe to a specific R. R. enterprise will not authorize the county to subscribe to the stock of a wholly different company with a different enterprise in view, although the former company may have become consolidated with the latter, or transferred its corporate rights to it, unless such consolidation or transfer was contemplated by the original charter, or was provided for by the general law. Per VORIES, JUDGE, dissenting.—State, ex rel, v. Green County, 536.

11. *Railroads, subscription to—Charter of Kansas City, G. & L. S. R. R.—Act of March 21st, 1868—Statute, construction of—Branch R. R.—Constitution.*—The act of March 21st, 1868, did not enlarge the power of County Courts to subscribe to the stock of the Kansas City, G. & L. S. R. R. under its charter, and authorize them to subscribe for special stock in the branch road proposed to

BONDS, RAILROAD, continued.

be built. Besides, such construction would be contrary to the Constitution then in force.—*Id.*

See Bonds, municipal, 1, 2

C.

CLARK COUNTY; See Bonds, Railroad, 3, 4.

COLLECTORS; See Revenue, 1, 2.

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CONTINUANCES; See Justices' Courts, 5; Wills, 3.

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1. *Contracts—Illegality—Void.*—A contract is void, when the consideration is illegal, in whole or in part, and it is immaterial whether the contract disclosed such illegality, or established it *aliunde*.—Sumner v. Sumner, 340.

2. *Contracts—Sales—Illegal intent—Knowledge of—Recovery.*—Apart from felonies or crimes involving great moral turpitude, the mere knowledge of the lender or vendor, that the money loaned, or property sold, is designed to be applied to an unlawful purpose, will not prevent a legal recovery based on such loan or sale.—Howell v. Stewart, 400.

3. *Leases–Mining–Regulations–License to continue mining.*–In 1838, the proprietors of mine La Motte promulgated certain rules and regulations for the miners, who by signing them had a right to mine and extract minerals under their provisions for ten years. At the expiration of this time the proprietors made an agreement, by which miners might continue operations by subscribing thereto, on condition—among others named—that the agreement was to be revocable by the future action of the proprietors. *Held*, that the agreement was not a lease but a license, revocable at the pleasure of the proprietors. And where the miner, after the license was revoked, resumed work and extracted mineral without the consent of the proprietors, he was a mere wrong doer and acquired no title to the mineral by such wrongful act.—Lunsford v. La Motte Lead Co., 426.

4. *Deeds–Seal–Scrawl–When necessary–Intention of parties.*—Where a deed purports to be executed under the hands and seals of all the parties, and is acknowledged as the deed of all, it is not necessary that a separate seal shall be placed opposite each name. If it appears that the seal affixed is intended to be adopted as the seal of each, it is sufficient.—*Id.*

See Bonds Railroad; Conveyances; Equity, 6; Evidence, 1; Frauds, statute of, 1, 2; Infancy, 2, 3, 4; Mortgages and Deeds of Trust; Railroads, 13, 14.

CONVEYANCES; See Contracts, 3, 4; Fixtures, 1, 2, 3; Fraudulent Conveyances; Infancy, 2; Land and Land Titles; Limitations, 3, 4; Sheriffs' Sales, 1, 2.

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CORPORATIONS, continued.

double liability clause in the State constitution of 1865, (See Art. VIII, § 6) is not liable in double the amount of his stock, for debts owing by the corporation prior to the repeal.—Ochiltree v. Iowa R. R. Co., 118.

2. *Corporations—Suits against, where to be brought—Construction of Statute.*—Suits against corporations can be brought as provided by the statute (W. S., 294, § 28), either in the county where the cause of action accrued, or in the county where such corporations have or usually keep an office or agent for the transaction of their usual and customary business, at the option of the plaintiff. Section 26 (W. S., 294,) provides for an enlargement and extension of service, by issuing process to a different county from where the suit is brought, when the officers of the company do not reside there. Mikel v. St L., K. C. & N. R. W. Co., 145.

3. *Corporations—Municipal purposes—Forest Park—Taxation, special and general.*—Under the provisions of the act to establish Forest Park, (Sess. Acts, 1872, p. 255) a district outside the city of St. Louis was incorporated. The commissioners created under it and having its exclusive management and control in no instance resided within its boundaries. Those owning lands within it were to be taxed for its establishment and support, against their consent, by persons having no interest in common with them. It was declared to be "for a municipal purpose of great importance to the city of St. Louis, conducive alike to the dignity and character of the city, and the recreation, health and enjoyment of its inhabitants." But the inhabitants of St. Louis were not to be taxed in anywise on account of it. *Held*, 1st. That the park was not established for "municipal purposes" within the meaning of § 4, Art VIII, of the State Constitution; 2nd. That it authorizes a special tax for a purpose of a general public character; and that for these reasons the act was void.—State *ex rel.*, v. Leffingwell, 458.

4. *Constitution—Corporations for municipal purposes—Meaning of term.*—A corporation, "for municipal purposes," as contemplated by §§ 4, 5, Art. VIII of the State Constitution, is either a municipality, such as a city or town, created expressly for local self-government with delegated legislative powers, or it may be a sub-division of the State for governmental purposes, such as a county, a school or road district, etc.; but it must embrace some of the functions of government, local or general; and no corporation not exclusively designed for this end can be properly denominated a municipal corporation.—*Id.*

5. *Constitution—Municipalities—Corporations, independent of.*—The Constitution did not contemplate that corporations, independent of a city government, should perform any of its functions.—*Id.*

6. *Revenue—Taxation—Street openings—Public Park.*—The doctrine which justifies special taxation against adjoining property holders for supposed benefits, as in the matter of street openings, has no application to public parks. A lot holder has a property interest, or easement, in the adjoining street, independent of the public parks. Not so, however, with lots fronting on public parks.—*Id.*

7. *Corporations—Notices to—How served.*—Notices can be served on corporations only in the mode pointed out by statute.—Cosgrove v. Tebo & N. R. R. Co., 495.

See Bonds, Railroad, 6, 7, 8, 9, 10, 11; Corporations, Municipal; Mechanic's lien, 1, 2; Railroads.

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1. *Corporations, municipal—Public improvements, power of subscription to.*—Municipal corporations have no inherent right of legislation, and can only subscribe for stock in public improvements, when such power is given to them by the Legislature and when the Constitution of the State does not prohibit it. —State, ex rel, v. Greene Co., 540.

CORPORATIONS, MUNICIPAL, continued.

2. *Corporations, municipal—Bonds—Authority to issue—Innocent holders.*—Municipal corporations having no inherent power to issue bonds, their power to issue bonds is a question of law of which all must take notice at their peril, and there can be no innocent holders, without notice, of such bonds.—*Id.*

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COUNTY SEATS, REMOVAL OF.

1. *Elections—Removal of county seat—"Two-thirds" vote—Construction of Constitution.*—The State Constitution, Art. IV, § 5, prohibits the removal of a county seat unless "two-thirds of the qualified voters shall vote in favor of such removal," and the same instrument provides for the registering of voters. The statute relating to the same subject, (Wagn. Stat., 405, § 22) requires a two-thirds vote of the "legally registered voters," to warrant the transfer. *Held*, that two-thirds of the votes cast at an election on the question of removal, would be insufficient, under the law, to authorize the change, unless they numbered two-thirds of all the qualified voters of the county.—State, *ex rel.*, Dobbins v. Sutterfield, 391.

COURT, COUNTY; see Bonds, railroad; Roads, 1, 2.

COURT, PROBATE; see Administration; Wills.

COURT, UNITED STATES; See Bonds, railroad, 1

CRIMES AND PUNISHMENTS.

1. *Criminal law—Larceny—Intent.*—A servant gave away certain old tools of his employer as a matter of charity. *Held*, not larceny. The act lacked the criminal intent.—State v. Fritchler, 424.

See Practice, criminal; Statute, construction of, 2.

D

DAMAGES.

1. *Statute, construction of—Death of child, damages for—Pecuniary loss—Funeral expenses.*—Under the statute (Wagn. Stat., 520, § 4), the damages for the killing of one's child are not restricted to the mere pecuniary loss. Such construction would make the words—"having regard to the mitigating or aggravating circumstances attending such wrongful act, neglect, or default"—wholly meaningless. Also the funeral expenses of the child are a part of the damages.—Owen v. Brockschmidt, 285.

2. *Damages—Satisfaction—Acceptance of judgment against one tort-feasor.*—The acceptance of a verdict and judgment against one tort-feasor is not conclusive evidence of a compromise of a claim for damages, and should be left to a jury, under proper instructions, for their decision.—*Id.*

3. *Damages—Injuries by reason of bad streets combining with other causes.*—If the driver of a horse is in the exercise of ordinary care and prudence, and injuries done the animal are attributable to the insufficiency of the street conspiring with some accidental cause, the municipality is liable in damages.—Hull v. City of Kansas, 599.

See Parent and child, 2; Railroads, 3, 4, 5, 6, 7; Slander.

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1. *Dedication of Land to the public—Subsequent condemnation.*—A dedication for an alley by acts *in pais* being usually uncertain of proof and inconclusive as to the public, is no defense against a proceeding by the proper authorities to condemn the property to public uses for the same purpose.—Rogers v. City of St. Charles, 229.

2. *Condemnation of land, costs of—Imperfect dedication—Constitutionality*—There is a manifest hardship in compelling a property owner to pay the costs of a condemnation in which he gets nothing beyond the benefits derived from the improvement. But, *semble*, that there is no constitutional obstacle to this

DEDICATION TO PUBLIC USE, continued.

in a case where the owner, having undertaken, and still intending to dedicate, yet refuses to sign a relinquishment which would make his imperfect dedication conclusive and so avoid the proceedings.—*Id.*

DEPOSITIONS; See Evidence, 3.

DESCENTS AND DISTRIBUTIONS; See Wills, 4, 5,

DOGS; See Railroads, 13.

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1. *Dower—Adultery—Statute, construction of.*—A. moved to Missouri, intending to purchase land and establish his home there. His wife declined to accompany him, saying that she might not like his new home. It was finally agreed, that he, if he purchased land, should come for, or send after, her. The wife afterwards committed adultery with one man, and subsequently married another, knowing that her first husband was still alive. She never joined her first husband, and was living with the second husband when she brought suit for dower in the land of her first husband. *Held*, that the separation must be considered as voluntarily made on her part, and her subsequent conduct forfeited under the statute (Wagn. Stat., 542, § 20,) her claims on her first husband's estate for dower.—McAllister v. Novenger, 251.

2. *Dower—Separation—Adultery—Reconciliation—Statute, construction of.*—If a husband and wife voluntarily separate, or the wife willingly and voluntarily lives apart from her husband, and afterwards lives in adultery, and no subsequent reconciliation takes place, she is barred from claiming dower in her deceased husband's estate. (Wagn. Stat., 542, § 20.)—*Id.*

See Wills, 2.

E.

EJECTMENT; See Limitations, 3, 4; Mortgages and Deeds of Trust, 1.

ELECTIONS.

1. *Elections—Registered voters, rejection of—Practice, civil—Trials—Evidence.*—The judges of an election have the right under the law to reject registered voters, and in a contest for an elective office the presumption is, that such voters were rightly rejected, unless the contrary is shown by the party claiming such rejection to have been illegal and improper.—Zeiler v. Chapman, 502.

2. *Elections—Non-registered voters—Count.*—The votes of persons not registered cannot be counted at an election.—*Id.*

3. *Elections, validity of—Registering officers—Failure to register the voters.*—Where prior to an election the registering officers fail to register the voters as required by law, the election subsequently held is void.—*Id.*

See Bonds, Railroad, 3, 4; County Seats, removal of.

EQUITY.

1. *Equitable mortgage—Vendor's lien, etc.*—An instrument of writing not under seal, and not acknowledged, but otherwise in the shape of a mortgage, given by the vendor of land to secure the purchase money, has the same effect as a vendor's lien.—Gill v. Clark, 415.

2. *Equity suits—Instructions in, improper.*—In equity suits, no declarations of law are proper, and if made will be disregarded by this court.—*Id.*

3. *Non-suit in equity will not bring law and fact up to the Supreme Court.*—A non-suit with leave to move to set it aside, will bring before the Supreme Court the questions of law and fact passed upon by the trial court, only when the non-suit is taken in a case at law. In equity cases, the court below must adjudicate upon the law and the facts, in order to bring them up on appeal or writ of error.—*Id.*

4. *Practice, civil—Witnesses, examination of—Time of, in equity proceedings.*—In equity proceedings the chancellor may in his discretion examine witnesses before the case is taken up.—Morey v. Staley, 419.

EQUITY, continued.

5. *Equity—Evidence—Supreme Court.*—In equity suits, the Supreme Court is not bound by the finding, upon the evidence, in the lower tribunal.—*Id.*

6. *Equity—Contracts—Certainty—Specific performance.*—A Court of Equity will not decree the specific performance of a contract, unless it is established with reasonable certainty, having regard to its subject matter and to the circumstances under which, and with regard to which, it was entered into.—Foster v. Kimmons, 488.

7. *Administrator—Demand allowed by collusion—Sale of lands—Bill in equity, to postpone.*—Where a claim against an estate is allowed, and land belonging thereto is about to be sold to satisfy the allowance, through fraud and collusion betweeen the administrator and the claimant, a bill in equity by the heirs to set aside the allowance and postpone the sale is a proper remedy, notwithstanding that an action of damages would lie against the administrator on his bond. Such action would sound only in damages and would fail to reach the land. Jurisdiction by a court of equity is not ousted in such case, because a remedy exists at law.—Stewart v. Caldwell, 536.

8. *Injunction—Cloud on title, etc.*—Injunction will lie to restrain the sale of land where a cloud would be thereby thrown upon the title of plaintiff in the injunction, although no title would in fact pass to the purchaser at the sale.—Vogler v. Montgomery, 577.

See Fraudulent conveyances; Land and Land Titles, 1, 2, 4, 5, Mortgages and Deeds of Trust, 1; Practice, civil—Pleading, 1; Practice, Supreme Court, 1.

ESTOPPEL; See Bonds, Railroad, 3; Railroads, 12; Wills.

EVIDENCE.

1. *Evidence—Admissions—Hearsay, etc.*—In a suit brought on the parol promise of defendant to pay for stock sold to "A.," although one of the plaintiffs testified, that he knew nothing about the contract with the defendant, yet in cross-examination it would be proper to show by him, that on a former occasion he had testified that it was his understanding, that "A." had purchased the stock and that defendant had become his surety. Such testimony was competent as an admission on the part of plaintiff.—Glenn. v. Lehnen, 45.

2. *Witnesses—Statute touching—Party dead, other party may testify as to what.*—In a suit based upon a series of contracts and transactions, the fact that a party to the suit made some of the contracts with one since dead, will not, under the Witness Act. (W. S., 1372, § 1), disqualify him from testifying to other transactions occurring subsequent to the decease.—Poe v. Domic, 119.

3. *Depositions, notice of—Service on attorney who was co-defendant.*—Notice of deposition served upon one who was, the attorney of record of all the defendants, is sufficient service on them, and is in nowise invalidated by the fact that the attorney was also co-defendant.—*Id.*

4. *Practice, civil—Evidence—Corporate existence—Appeal bond.*—The appeal bond given by the appellant, in which appellant was a party by its corporate name signed by its president and secretary, is admissible in evidence to prove its corporate existence.—Transier v. St. L., K. C. & N. R. Co., 189.

5. *Practice, criminal—Evidence—Confessions, when admissible.*—The officers of the law went to A. and told him that all they wanted was to recover the goods stolen, and if he would tell them where they were, so that they could get them, that that would be the end of the matter, and nothing further would be done. A. informed them, whereupon he was arrested, and was convicted on this confession. *Held*, that this confession was involuntary, being induced by the flattery of hope and a promise of immunity from prosecution, and was inadmissible in evidence.—State v. Hagan, 192.

6. *Practice, civil—Trial—Evidence—Unstamped agreements.*—A written agreement, not stamped as the law requires, is admissible in evidence upon a stamp being affixed and cancelled.—Boly v. Lake, 201.

EVIDENCE, continued.

7. *Practice, civil—Trial—Witnesses—Husband and wife—Statute, construction of.*—The wife is a competent witness in a suit, when she is the real, and her husband only a nominal, party in interest (Wagn. Stat., 519–20, § 2).—Owen v. Brockschmidt, 285.

8. *Husband and wife—Witnesses for each other—Agency.*—The husband is admissible as a witness in behalf of his wife concerning matters wherein he acted as her agent.—Chesley v. Chesley, 347.

9. *Evidence Experts, opinions of, as to market value of dogs.*—Experts may be allowed to give their opinions as to the marketable value of dogs, the opinions being based either on actual sales or their general observation and experience.—Cantling v. H. & St. Joe R. R. Co., 385.

10. *Practice, criminal—Evdence—Confessions.*—In order that a confession may be received in a criminal case, it must be voluntary; it will be excluded, if it was induced by a promise of benefit or favor, or threat of intimidation or disfavor by a person having authority in the matter.—State v. Jones, 478.

11. *Practice, criminal—Confessions—Admissibility of.*—When a confession has once been obtained by means of hope or fear, subsequent confessions are presumed to come from the same motive, and are inadmissible, unless it is shown that the original motives have ceased to operate.—*Id.*

12. *Practce, crminal—Confessions—Artifice.*—Confessions are not inadmissible, because produced by artifice; *e. g.*, by persuading the prisoner, that his accomplices were in custody, or that they had divulged the facts relative to the crime.—*Id.*

13. *Evidence—Res gestæ—Possession—Delivery—Statements.*—The statements of one in possession of personal property, when delivering it to another, are admissible in evidence as a part of the *res gestæ* and explanatory of the transaction.—Colt v. LaDue, 486.

See Administration, 8; Bonds, Judicial, 1; Elections, 1; Equity, 4, 5; Forcible entry and detainer, 1, 5; Land and land titles, 3; Partnership, 4; Practice, civil—New trials, 1; Practice, criminal, 2, 15, 28; Railroads, 5, 15; Slander, 1, 3, 4.

EXECUTION; See Fraudulent conveyances, 1, 2; Justices' courts, 1; Sheriffs' sales, 1, 2, 3, 4.

EXPERTS; See Evidence, 9

F.

FENCES; See Railroads, 4, 5, 7.

FIXTURES.

1. *Conveyances—Real estate—Fixtures—Temporary removal.*—A conveyance of real estate carries with it the fixtures attached to the property and those which have been removed merely for a temporary purpose.—Curry v. Schmidt, 515.

2. *Mortgages and deeds of trust—Fixtures, erection of—Sale—Whose property.*—If a mortgagor erects improvements on, or attaches fixtures to, the mortgaged premises, they become the property of the mortgagee for the payment of his debt; and if the property is sold under the mortgage or deed of trust, they become the property of the purchaser.—*Id.*

3. *Mortgages and deeds of trust—Fire—Removal of fixtures—Sale.*—After certain real estate was conveyed by deed of trust, a fire occurred, which burned down the improvements, and some of the fixtures were removed. Afterwards, the trustee sold the property under a deed of trust, describing it in his deed as in the deed to him. *Held*, that by such sale, no intention to the contrary appearing, the removed fixtures were not sold; that the trustee might have sold these fixtures as personal property, but had no right to sell them merely by selling the ruined premises.—*Id.*

FORCIBLE ENTRY AND DETAINER.

1. *Forcible entry and detainer—Possession—Entry—Cutting timber—Chain of evidence.*—The mere entry upon land and cutting timber is not of itself sufficient to sustain an action of forcible entry and detainer, but in connection with other circumstances it may form a very material link in the chain of evidence going to establish possession.—Powell v. Davis, 315.
2. *Forcible entry and detainer—Possession—Intruder—Authority or title, lack of.*—Where a party occupies as a mere intruder, he will be confined to the land actually possessed; and where the reliance is on possession only, without exhibiting or claiming authority or title, he will be restricted to what he actually occupies.—*Id.*
3. *Forcible entry and detainer—Color of title—Possession of part.*—One in actual possession of a part of a tract of land, holding the whole under claim and color of title, will in law be held to be in possession of the remainder.—*Id.*
4. *Forcible entry and detainer—Possession of farms—Separate timbered land—Indicia of possession.*—Persons owning timbered land, situated separate and apart from their farms, who are accustomed to use it for the purpose of cutting wood and obtaining rails, exhibit such visible indicia of possession, as to authorize and justify the finding of an actual possession.—*Id.*
5. *Forcible entry and detainer—Possession of land, how evidence.*—The owner is not always bound to be upon the land, either by himself or agent. An entry with the intention of permanent occupation, and clearing and fitting the land for cultivation, will be sufficient.—*Id.*
6. *Forcible entry and detainer—Disseizin—Title.*—In an action of forcible entry and detainer the defendant cannot raise the question of title when he is in by disseizin.—May v. Luckett, 437.
7. *Forcible entry and detainer—Landlord and tenant—Sheriff's sale of tenant's interest—Disseizin—Statute, construction of* —A. leased premises to B., who sub-let them to C. At an execution sale against B., A. purchased B.'s interest in the premises, and took a sheriff's deed therefor. A. requested C. to attorn to him or surrender possession to him; C. refused to do so, but locked up the premises, and left them before the expiration of the lease. A. took possession the next day. *Held*, that A. obtained possession of the premises wrongfully, and without force, by disseizin, and, after a written demand for the premises from B., was guilty of unlawful detainer under the statute (Wagn. Stat., 642, § 3).—*Id.*

FOREST PARK.

1. *Corporations—Municipal purposes—Forest Park—Taxation, special and general.*—Under the provisions of the act to establish Forest Park, (Sess. Acts, 1872, p. 255) a district outside the city of St. Louis was incorporated. The commissioners created under it and having its exclusive management and control in no instance resided within its boundaries. Those owning lands within it were to be taxed for its establishment and support, against their consent, by persons having no interest in common with them. It was declared to be "for a municipal purpose of great importance to the city of St. Louis, conducive alike to the dignity and character of the city, and the recreation, health and enjoyment of its inhabitants." But the inhabitants of St. Louis were not to be taxed in anywise on account of it. *Held*, 1st. That the park was not established for "municipal purposes" within the meaning of § 4, Art VIII, of the State Constitution; 2nd. That it authorizes a special tax for a purpose of a general public character; and that for these reasons the act was void.—State *ex rel.*, v. Leffingwell, 458.
2. *Constitution—Corporations for municipal purposes—Meaning of term.*—A corporation, "for municipal purposes," as contemplated by §§ 4, 5, Art. VIII of the State Constitution, is either a municipality, such as a city or town, created expressly for local self-government with delegated legislative powers, or it may be a sub-division of the State for governmental purposes, such as a county, a school or road district, etc.; but it must embrace some of the functions of government, local or general; and no corporation not exclusively designed for this end can be properly denominated a municipal corporation.—*Id.*

FOREST PARK, continued.

3. *Constitution—Municipalities—Corporations, independent of.*—The Constitution did not contemplate that corporations, independent of a city government, should perform any of its functions.—*Id.*

4. *Revenue—Taxation—Street openings—Public Park.*—The doctrine which justifies special taxation against adjoining property holders for supposed benefits, as in the matter of street openings, has no application to public parks. A lot holder has a property interest, or easement, in the adjoining street, independent of the public parks. Not so, however, with lots fronting on public parks.—*Id.*

FRAUD; See Administration, 9; Frauds, Statute of; Fraudulent conveyances.

FRAUDS, STATUTE OF.

1. *Statute of frauds—Original and collateral liability.*—The question whether a verbal contract comes within the Statute of Frauds or not, depends wholly upon the agreement. If a party agrees to be originally bound, the contract need not be in writing; but if his agreement is collateral to that of the principal contractor, or is that of a guarantor or a surety for another, the agreement must be in writing. It is immaterial in such case whether the promise is made prior to the passing or delivery of the consideration or afterwards; in either case the contract must be in writing; and in the latter must have a new consideration to uphold it.—Glenn v. Lehnen, 45.

2. *Contracts—Partial performance—Frauds, statute of—Specific performance——Deeds—Undue influence.*—A. made a deed to his daughter B. for certain lands, but retained the deed, showing it to B. and her husband C., saying that she should have it at his death, but he wanted them to come and take charge of the property and live on it. B. and C. came and lived on the property and made improvements, and afterwards, hearing they had no title thereto, requested A. to give them the deed, threatening, in case of refusal, to leave the land. A. finally gave them the deed, but took a conveyance of a part of the land, including the improvements, from them to him for his life. A. afterwards brought suit to set aside his conveyance, on the ground of undue influence. *Held*, that if B. and C. had remained on the land till A.'s death, they could have compelled his heirs to specifically perform the contract and convey the land to B., that A. only did in advance what he intended to do at his death, and that there was no undue influence exerted.—Bowles v. Wathan, 261.

FRAUDULENT CONVEYANCES.

1. *Fraudulent conveyances—Resulting trusts—Sale on execution.*—When one makes a conveyance of his lands in order to hinder, delay and defraud his creditors, there is created thereby a resulting trust in favor of his creditors, and such property can be sold on an execution against him. Ryland vs. Callison, 513.

2. *Fraudulent conveyances—Equity—Proceedings to set aside—Purchaser at execution sale.*—A purchaser of B.'s land at execution sale will occupy as advantageous a position as would a creditor of B., in proceedings to set aside a prior conveyance by B. of this land on account of fraud.—*Id.*

See Homestead, 1.

G.

GENERAL ASSEMBLY; See Legislature.

GREENE COUNTY; See Bonds, Railroad, 6, 7, 8, 9, 10, 11.

H.

HANNIBAL, CITY OF.

1. *Corporations, municipal—Hannibal, City of—Wharves, altering and extending—Statutes, construction of.*—The power to alter wharves, given to the City of Hannibal (Amended Charter of 1860–1), includes a power to extend or diminish them.—City of Hannibal v. Winchell, 172.

HOMESTEAD.

1. *Homestead exemption—Construction of statute—Claim not made by housekeeper—Fraudulent conveyance by.*—Under § 2 of the act concerning Homesteads, (Wagn Stat., 697,)where a homestead is claimed, the sheriff cannot proceed with his levy until he has ascertained by appraisers in the mode directed by the act, the extent and value of the premises, and that they are beyond the limit protected against executions. And the claim is not lost when not asserted by the housekeeper or head of the family, or by reason of the fact that he had theretofore fraudulently conveyed away the property—Vogler v. Montgomery, 577.

HUSBAND AND WIFE; See Dower, 1, 2; Evidence, 7, 8.

I.

INCEST; See Practice, criminal, 1, 2.

INDORSEMENT; See Bills and Notes.

INFANCY.

1. *Infants—Conveyances to, etc.*—Conveyances to infants are not void, but merely voidable.—Baker v. Kennett, 82.

2. *Infant—Conveyances to—Acts of disaffirmance—What sufficient.*—An infant, who had taken a deed of land and given his note for the purchase money, made an attempt to disaffirm the contract before his majority, and again within a few days thereafter, and, upon the refusal of the vendor to agree thereto, offered to give him $2,000 together with the improvements erected by himself on the land, by way of compromise; and abandoned the premises and left them in a position for the vendor to occupy it at any time he saw fit. *Held,* that the disaffirmance was sufficiently speedy and unequivocal to avoid the contract.—*Id.*

3. *Infants—Contracts by—Ratification of, after majority—What sufficient and what not.*—To constitute a ratification of an infant's contract, a mere acknowledgment that the debt existed, or that the contract was made, is not sufficient. There need not be a precise and formal promise, but there must be a direct and express confirmation and a substantial promise to pay the debt or fulfill the contract. And the promise must be made with a knowledge of the facts, and with a deliberate purpose of assuming a liability from which the party knows that he is discharged.—*Id.*

4. *Infant—Note by—Disaffirmance of—Sureties, etc.*—Where an infant gives his note for land purchased, and at his majority disaffirms the contract the sureties on his note will not be liable.—*Id.*

5. *Limitations, statute of—Infancy—Entry—Action may be commenced, when.*—Parties to a suit for the recovery of lands, who were infants when their right of action or entry first accrued, may commence their action or make an entry within three years after their disability has been removed, if that event does not occur more than twenty-four years after the accrual of the right. Poe v. Domic, 119.

6. *Statutes—Constitutionality of—Minors declared of age.*—It is too late now to question the constitutionality of an act of the Legislature, passed prior to 1865, declaring a minor of age and legally competent to transact his own business.—Shipp v. Klinger, 238.

See Parent and Child, 1.

INJUNCTION; See Equity, 8; Practice, civil, parties, 2.

INSANITY; See Practice, criminal, 11.

INSTRUCTIONS; See Equity, 2; Practice, civil, Trials, Practice, criminal, 7.

J.

JEOFAILS.

1. *Practice, civil—Errors of the clerk—When corrected.*—The mistakes and clerical errors of the clerk of the circuit can be corrected at any time. Coop v. Northcutt, 128.

JUDGMENT.

Judgment, final—What is—Mandamus from Circuit to County Court.—The judgment of a circuit court against the justices of the county court, granting a writ of mandamus on them to appoint commissioners to select a cite for a county seat, is a final judgment from which appeal will lie, notwithstanding the fact, that a proceeding is at the time pending in the county court in regard to the establishment of a county seat. The judgment is a finality as to the circuit court. (McVey v. McVey, 51 Mo., 406; Thomas v. Drennan, 41 Mo., 289.) This proposition is not in conflict with Tetherow v. Grundy Co., 9 Mo., 118. State *ex rel.* Dobbins v. Sutterfield, 391.

See Attachment, 1; Justices' Courts, 1; Practice, civil, trials, 12; Sheriffs' sales, 3.

JURISDICTION.

1. *Bonds, railroad—Coupons—Suit on, in U. S. Courts—Jurisdiction—Aggregate amount.*—In suit to recover coupons on railroad bonds issued by a County Court, the question, whether the amount sued on is sufficient to bring it within jurisdiction of the Circuit Court, is to be determined by the aggregate amount of the coupons. Smith, v. The County of Clark, 58.

2. *Practice, civil—Circuit Court, jurisdiction of—Aggregate amount claimed in all the counts.*—A suit can be brought in the Circuit Court, provided the aggregate amount claimed in all the counts of the petition, is sufficient to give the court jurisdiction. [Smith v. Clark County, *ante p.* 58.] Fickle v. St. Louis, Kansas City and Northern Railway Company, 219.

See Administration, 9; Corporations, 2; Practice, Criminal, 16; Presbyterian Church, 1, 3; Railroads, 6; Roads, 1, 2.

JURY; See Practice, civil trials, 2; Practice, criminal, 3, 4, 5, 23.

JUSTICES' COURTS.

1. *Justices' Courts—Judgment—Execution—Motion to quash, etc.*—The entry on a justice's docket showed suit brought against Fea, Brother & Turnbull, and judgment against defendants "as a firm, or against Joseph Fea and William Turnbull, as the summons was served on them personally." The execution issued under it recited a judgment and ordered a levy against the three defendants. *Held*, that although the judgment bound only the two defendants named, yet under the statute (W. S., 839, § 15), the execution should not be quashed, but should be amended, so as to conform its recitals to the law, and should be directed against the defendants who had been personally served. Caldwell v. Fea, 55.

2. *Practice, civil—Appeal from Justice—Entry of appearance—Trial.*—In a cause appealed from a justice of the peace, the appellee, who has failed to enter his appearance, cannot be forced to trial at the first term of the court. Chrismer v. The St. Louis, Kansas City and Northern Railway Company, 152.

3. *Practice, civil—Appeal from a justice of the peace—Amendments in the Circuit Court—Constable's return.*—In an appeal case from a justice, the Circuit Court can allow the constable's return to be amended; for the Circuit Court can do whatever the justice can.—Transier v. St. L., K. C. & N. R.W. Co., 189.

4. *Practice, civil—Evidence—Corporate existence—Appeal bond*—The appeal bond given by the appellant, in which appellant was a party by its corporate name signed by its president and secretary, is admissible in evidence to prove its corporate existence.—*Id.*

5. *Practice, civil—Appeal from Justices—Entry of appearance—Right of continuance.*—In a cause appealed from a justice, but not on the day of judgment,

JUSTICES' COURT, continued.

if the appellee fail to enter his appearance on or before the second day of the term, the cause is not triable at the first term, unless by consent of both parties. [Nay v. Han. & St. Joe. R. R., 51 Mo., 575.]—*Id.*

See Railroads, 6.

L.

LAND AND LAND TITLES.

1. *Lands and land-titles—Misdescription in deed—Subsequent deed correcting—Titles, equitable and legal.*—Land was conveyed to A. but it was misdescribed in the deed. By a subsequent deed this mistake was corrected. *Held*, that the first deed gave him an equitable title, which the second deed perfected into a legal title.—Fitch v. Sosser, 672.

2. *Lands and land-titles—Equitable title—Possession—Farm—Timber-land.*—A. having an equitable title to 200 acres of land, consisting of a prairie-farm of 160 acres, and 40 acres of timber-land a mile or two away from it, leased the farm to tenants, allowing them to cut timber for the use of the farm and firewood from the 40 acre tract. *Held*, that the only value of the timber-land was in its use for such purposes, that it was not designed for cultivation or inclosure, and that A. was in possession of both tracts.—*Id.*

3. *Lands and land titles—Evidence—Declarations asserting title.*—In a suit for the title to land, the declarations made by a party in possession, asserting his title are not competent testimony.—Morey v. Staley, 419.

4. *Equity—Conveyance—Title—Actual and constructive notice.*—Where the title to a tract of land was in the son, who made a power of attorney, authorizing his father to convey and the father does convey; but afterwards, on non-payment of the purchase money, he takes back the title to himself, and has such deed recorded, in a suit in equity to establish the son's title, the question in regard to an acquiescence of the son in such a condition of the title, is one of actual knowledge and not of such constructive notice as our statuset give to recording a deed.—*Id.*

5. *Land and land titles—Conveyances—Heirs.*—A conveyance of land to a grantee and his hsirs creates a fee simple title, both at law and in equity.—Mercier v. The M. R., Ft. S. and G. R. R. Co., 506.

See Forcible entry and detainer, Fraudulent conveyances, 1, 2; Limitation, 1, 3, 4, 5, 6; Mortgages and deeds of trust, 1; Sheriffs' Sales, 1.—*Id.*

LANDLORD AND TENANT.

1. *Forcible entry and detainer—Disseizin—Title.*—In an action of forcible entry and detainer the defendant cannot raise the question of the title when he is in by disseizin.—May v. Luckett, 437.

2. *Forcible entry and detainer—Landlord and tenant—Sheriff's sale for tenants interest—Disseizin—Statute, construction of.*—A. leased premises to B., who sub-let them to C. At an execution sale against B., A. purchased B.'s interest in the premises, and took a sheriff's deed therefor. A. requested C. to attorn to him or surrender possession to him; C. refused to do so, but locked up the premises, and left them before the expiration of the lease. A. took possession the next day, *Held*, that A. obtained possession of the premises wrongfully, and without force, by disseizin, and, after a written demand for the premises from B., was guilty of unlawful detainer under the statute. (Wagn. Stat., 880, § 15).—*Id.*

3. *Landlord and tenant—Sales—Attornment—Statute, construction of*—When premises have been sold by the owner or by proceedings *in invetum*, the tenant thereof can attorn to the purchaser under the statute. (Wagn. Stat. 880, § 15.)—*Ib.*

See Forcible entry and detainer.

LEASE; See Contracts.

LEGISLATURE.

1. *Legislature—Contest for seats in—Costs, how adjusted.*—The contestee for a seat in the General Assembly of the State cannot have his action against the unsuccessful contestor for costs expended in the contest, where the same is carried on before the legislature. Section 58 of the Act touching Elections. (Wagn. Stat., 574,) applies only to contests had before the courts of the country.—Steele v. Wear, 531.

LICENSE; See Contracts, 3.

LIEN, MECHANICS'; See Mechanics' lien.

LIEN, VENDOR'S.

1. *Equitable mortgage—Vendor's lien, etc.*—An instrument of writing not under seal, and not acknowledged, but otherwise in the shape of a mortgage, given by the vendor of land to secure the purchase money, has the same effect as a vendor's lien.—Gill v. Clark, 415

LIMITATIONS.

1. *Limitations, statute of—Life estate of widow—Statute commences running, when*—The life estate of a widow in the lands of her deceased husband, prevents the running of the statute of limitations against his heirs, until after the time of the widow's death.—Carr v Dings, 98.

2. *Limitations—Presumption as to payment of debts.*—The common law presumption of the payment of a debt after the lapse of twenty years still exists notwithstanding our statute of limitations.—*Id.*

3. *Ejectment—Possession—Limitation.*—Open, notorious, peaceable, continuous and adverse possession of land for twenty years will give a title that will authorize a recovery in ejectment.—Dalton v. Bank of St. Louis, 105.

4. *Acknowledgment—Deed with defective—Adverse possession.*—A deed, notwithstanding a defective aeknowledgment, is good between the parties. It would constitute color of title, and enable persons in possession of land to avail themselves of title by adverse holding.—*Id.*

5. *Limitation, stutute of—Infancy—Entry—Action may be commenced, when.*—Parties to a suit for the recovery of land, who were infants when their right of action or entry first accrued, may commence their action or make an entry within three years after their disability has been removed, if that event does not occur more than twenty-four years after the accrual of the right.—Poe v. Domic, 119.

6. *Trusts and trustees—Limitations, statute of—Claim of title by trustee independent of the trust.*—When the trustee denies the trust and openly claims the trust property by a title independent of the trust and adversely to the claim of the beneficiary, the statute of limitations will run in his favor.—*Id.*

7. *Limitations, statute of—Section 7, Wagn. Stat. 197—Prospective.*—Section 7 of the Limitation Act (Wagn. Stat., 917) is prospective in its operation, and has no application to actions commenced, nor to cases where the right of entry accrued before it was enacted.—McCartney, Adm'r v. Anderson, 320.

See Administration, 8.

M.

MAINTENANCE.

1. *Practice, civil—Motion pendente lite—Notice, of, etc.*—A court may in its discretion, hear a motion for support and maintenance *pendente lite* after a continuance of the cause, and without notice, and on the day of filing the motion.—Curtis v. Curtis, 351.

MALICE.—See Practice, criminal, 8, 10.

MANSLAUGHTER.—See Practice, criminal.

MECHANIC'S LIEN.

1. *Mechanics' lien—Notice to owners—Name of party claiming lien.*—A corporation, claiming a lien on certain property, gave notice to the owners thereof, stating its own name in full, but signed the notice with its abbreviated name, omitting "of St. Louis." *Held*, that the variation was not material, because the owners could not be misled thereby.—Mississippi Planing Mill v. Presbyterian Church, 520.

2. *Mechanic's lien—Account filed—Name of party claiming lien.*—A corporation claiming a lien against certain property, filed its verified account with the clerk of the court. This account did not state the full name of the corporation, omitting "of St. Louis," but referred to the notice given to the owners of the property where the full corporate name was given; the affidavit to the account used the full corporate name: *Held*, that the owners of the property were not misled, and that there was a substantial compliance with the law.—*Id.*

MINES AND MINING; See contracts, 3.

MISNOMER; See Mechanics' lien, 1, 2.

MORTGAGES AND DEEDS OF TRUST.

1. *Ejectment—Trustee's Sale—Proceedings in bankruptcy—Adjudication—Equity.*—The mere fact, that proceedings in bankruptcy, which had not proceedep to an adjudication, had been commenced against the grantor in a deed of trust will not invalidate a sale under said deed by the trustee; such sale would convey the legal title, and such title would be available in an action of ejectment.

   QUERY, whether in a direct proceeding for that purpose, a court of equity would set aside such sale?—McGready v. Harris, 137.

2. *Mortgages and deeds of trust—Sales under—Disposition of proceeds.*—When a mortgage or deed of trust is given on property to secure the payment of notes maturing at different times, and the property, or a part thereof, is sold in accordance with the deed to satisfy one of the notes, the overplus, after satisfying the expenses of the trust and that note, must be held by the trustee subject to the same lien as the property was, even though the deed is silent as to the disposition of the overplus, and does not state that default in one note shall cause the others to become due and payable.—Huffard v. Gottberg, 271.

3. *Mortgages and deeds of trust—Sale of property en masse—When set aside.*—A trustee's sale of land *en masse* under deed of trust will not be set aside because the land was capable of easy division, unless the interests of the grantor were sacrificed by such sale.—Chesley v. Chesley, 347.

4. *Equitable mortgage—Vendor's lien, etc.*—An instrument of writing not under seal, and not acknowledged, but otherwise in the shape of a mortgage, given by the vendor of land to secure the purchase money, has the same effect as a vendor's lien.—Gill v. Clark, 415.

   See Fixtures, 2, 3.

MURDER; See Practice, criminal.

N.

NEGLIGENCE; See Railroads, 5.

O.

OFFICERS; See Collectors; Sheriff.

P.

PARK, PUBLIC; See Forest Park.

PARENT AND CHILD.

1. *Parent and child—Child's earnings, claim to, how relinquished.*—The relinquishment of the father's claim to the earnings of his minor son may be established by direct evidence, or may be implied from circumstances.—Dierker to use of, etc. v. Hess, 246.

2. *Parent and child—Battery of child—Suit by parent—Loss of services—Exemplary damages.*—In a suit by a parent for battery of his child, evidence having been offered of loss of the services of the child, it is competent for the jury to look at all the circumstances attending the battery, and to award such damages as they may deem ample and reasonable to compensate the plaintiff, and also to vindicate his rights, and to prevent similar abuses in future.—Klingman v. Holmes, 304.

See Infancy.

PARTNERSHIP.

1. *Partnership—Share in profits—When p artrs.*—The single circumstance that one is to have a share in the profits, does not necessarily make him a partner. He must have some interest in the business or property of the business or trade, so as to give him a lien on the property for the protection of his interests or profits, and a control over the same. The interest in the profits must be mutual; each person must have an interest in the profits as a principal trader.—Campbell v. Dent, 325.

2. *Credit—Partnership, not bound—Partnership—Sale to member on personal credit—Partnership not bound.*—Where one elects to sell goods to a member of a firm on his individual credit, giving no credit to the firm, the co-partners will not be bound even if the goods purchased go into the partnership fund.—Gates v. Watson, 585.

3. *Practice, civil—Pleading—Partnership—When need not be pleaded.*—In an action for goods sold, plaintiff may show, without alleging the fact in his pleading, that defendant and another were partners, and that the contract was made by such other partner for the benefit of the firm in the usual course of business. (Under our statute such contract is both joint and several, and it is not necessary to a recovery that plaintiff should join all the partners as defendants.)—*Id.*

4. *Partners—Persons not, held as, when.*—In order to bind persons as partners it is unnecessary to show the partnership. It is sufficient to prove that they held themselves out as partners.—*Id.*

See Arbitration and Award, 2.

PENITENTIARY.

1. *Mandamus—State Auditor—Lessees of Penitentiary—Labor of convicts—Acts of March 20th and 22nd, 1873.*—The acts of March 20th and 22nd, 1873, are *in pari materia* and must be construed together, and under them the lessees of the penitentiary are entitled to pay for convict labor on the Capitol grounds and to the State Auditor's warrant therefor.—State *ex rel.* Perry v. Clark, 216.

POSSESSION; See Forcible entry and detainer.

PRACTICE, CIVIL.

1. *Practice, civil—Sheriff's returns—When amendable.*—Sheriff's returns may be amended at any time during the pendency of the suit, and it is not necessary that anything shall exist on the minutes or records to justify such amendments. They are even amendable at a subsequent term, on a proper state of facts, in support of the judgment.—Magrew v. Foster, 258.

2. *Practice, civil—Sheriff's returns—Contradiction of.*—A sheriff s return, that he has levied on certain property belonging to defendant, cannot be contradicted by the defendant in that suit by showing that he does not own the property.—*Id.*

3. *Practice, civil—Attachment—Defendant, how brought before the court.*—In attachment cases the law necessarily implies that the defendant may be brought before the court by personal, or other service of the summons, if he

PRACTICE, CIVIL, continued.

reside or can be found in the State, or the suit may be proceeded in by publication.—*Id.*

4. *Practice, civil—Motion pendente lite—Notice of, etc.*—A court may in its discretion hear a motion for support and maintenance *pendente lite* after a continuance of the cause, and without notice, and on the day of filing the motion.—Curtis v. Curtis, 351.

PRACTICE, CIVIL—ACTIONS.—See Administration, 6; Ejectment; Practice civil—Parties, 3; Quo Warranto; Revenue, 1, 2.

PRACTICE, CIVIL—APPEAL.—See Attachments, 1; Justices' courts, 2, 3, 4, 5; Practice, civil—New Trials; Practice, Supreme court.

PRACTICE, CIVIL—NEW TRIALS.

1. *Practice, civil—New trials—Newly discovered evidence Affidavit.*—The granting of a new trial on the ground of newly discovered evidence, is a matter largely resting in the sound discretion of the court trying the cause, and the overruling of the motion is no error, where the plaintiff's affidavit does not show due diligence, nor why he could not have procured this evidence at the trial.—Coop v. Northcutt, 128.

2. *Practice, civil—New trial, refusal of—When Supreme Court will interfere.*—The supreme court will not interfere with the discretion of lower courts, in refusing to grant a new trial, unless a strong case is made showing an improper exercise of discretion to the prejudice of the party complaining.—Tucker v. St. L., K. C. & N. R. W. Co., 177.

3. *Practice, civil—New trial—Surprise.*—A cause by agreement of parties, and by order of court, was set for a certain day of a subsequent term, but was called and tried the day before, in the absence of the defendant. It appeared by affidavits that the defendant appeared at the appointed time, ready to try the cause, when he first learned of the trial, and it also appeared that a witness informed the plaintiff's attorney during the trial that the defendant's attorney understood and informed witness that the cause was to be tried next day. *Held*, that the court should have granted a new trial on the ground of surprise. —*Id.*

See Practice, civil—Appeal; Practice, supreme court.

PRACTICE, CIVIL—PARTIES.

1. *Practice, civil—Parties—Persons in interest.*—Courts are not organized to decide abstract propositions of law, and the persons in interest must be brought before the court.—The State of Missouri *ex rel.*, Robinson v. Sanderson, 203.

2. *Railroads, subscription to—Bonds, taxes to pay interest on—County Court—Railroad—The State as plaintiff.*—In a suit to enjoin the collector from collecting taxes levied to pay the interest on bonds (alleged to be illegal) issued to a railroad, the county court who issued the bonds and levied the tax, and the railroad should be made parties thereto. The State through its proper officers can bring such suits.—*Id.*

3. *Practice, civil—Actions—Leased land—Trespass to—Who can sue.*—The owner of land can bring an action against a trespasser for cutting timber on it and carrying it away, though the land is then in the possession of his tenant.—Fitch v. Gosser, 267.

See Practice, civil—Pleading, 9; Railroads, 2, 4, 11; Revenue, 1, 2.

PRACTICE, CIVIL—PLEADING.

1. *Practice, civil—Petition—Specific Performance—Rents and profits.*—A claim for specific performance and for rents and profits may be united in the same bill. —Duvall vs. Tinsley, 93.

2. *Railroads—Accidents—Damages by cattle—Statement of cause of action—Double damages—Statute, construction of.*—In a suit for damages by a railroad, it appeared by the allegations and evidence that one of its trains was wrecked where the track ran through plaintiff's field; that there was no fence along the track; that the hogs and cattle in the train were necessarily

PRACTICE, CIVIL—PLEADING, continued.

turned into the field in the effort to extricate them from the wreck; that they were collected together and driven away, and that while in the fields they damaged the crops. There was no allegation that the damage was caused by the failure of the railroad to construct or maintain fences or cattle-guards, as required by law. *Held*, that in such case the statute (W. S. 310–11, § 43) did not contemplate the allowance of double damages.—Grau v. St. L., K. C. & N. R. R. Co., 240.

3. *Practice, civil—Pleading—Striking out—Discretion in, etc.*—Trial courts have some latitude of discretion in allowing or refusing permission to file pleadings out of time, and unless that discretion be abused or unsoundly exercised, no case is made for the interference of this court.—Cooney v. Murdock, 349.

4. *Practice, civil—Demurrer—Answer—When filing proper.*—Permission to file an answer during vacation was granted and a demurrer was filed instead. Afterwards the demurrer was, on motion, stricken out and defendant immediately offered to file his answer. *Held*, that if the answer had disclosed a meritorious defense, and no particular delay or hardship would have resulted, such action of the court would be error.—*Id.*

5. *Practice, civil—Pleading—Notes—Illegality of contract—Misdemeanor—Statute, construction of.*—In a suit on a note an answer alleging that the money was advanced for an illegal purpose is bad, if it does not allege that the money was so used; furthermore, when the act is made by statute (Acts of Feb. 26th, 1868, and Feb. 2nd 1872,) a misdemeanor, the intent to do the act is wholly immaterial.—Howell v. Stewart, 400.

6. *Practice, civil—Pleading—Answer—Demurrer—Motion to strike out.*—When the answer to a suit contains no defense, the plaintiff may demur to it or move to strike it out.—*Id.*

7. *Practice, civil—Pleading—Amendments—Meritorious defense—Supreme Court.*—The Supreme Court will not interfere with the discretion of lower courts in refusing to allow time to amend an answer, unless the record discloses a meritorious defense, which the court by its action precluded the defendant from availing himself of.—*Id.*

8. *Practice, civil—Pleading—Bonds—Breaches—General verdict.*—A suit on an administrator's bond alleged several breaches in not paying over money collected. *Held*, that there was substantially but one breach—the failure to pay over or account for money collected—and that a general verdict was proper.—State to use of Headlee, Admr. v. Shackelford's Adm'r, 518.

9. *Practice, civil—Pleading—Answer—Defect of parties.*—By answering to the merits, the defendant waives all objections on the score of defects of parties in the action.—Mississippi Planing Mill v. Presbyterian Church, 520.

See Administration, 10; Bonds, judicial, 3; Partnership, 3; Railroads, 6; Slander, 1.

PRACTICE, CIVIL—TRIALS.

1. *Instructions should be predicated on the evidence.*—Instructions should always be predicated on the evidence in the case to which they relate.—Glenn v. Lehnen, 45.

2. *Practice, civil—Chancery cases—Issues referred to jury—Whether other verdict can be examined in Supreme Court.*—The verdict of a jury, upon issues referred to it by the court in a chancery case, is not properly reviewable in the Supreme Court. The lower court may disregard the verdict, and decide upon the issues, or may refer them to another jury. (W. S., 1041, § 13.) Weeke v. Senden, 129.

3. *Practice, civil—Trials—Bonds, loss of—Parol testimony.*—When a bond is given in a cause and is afterwards lost, its contents may be proved in that cause by parol testimony.—Compton, *et al.*, v. Arnold, 147.

PRACTICE, CIVIL—TRIALS, continued.

4. *Practice, civil—Slander—Trials—General verdict—Several counts.*—In an action for slander, the petition containing several counts, a general verdict is proper, when the several counts contain the same slander uttered at different times.—Polston v. See, 291.

5. *Practice, civil—Trials—Evidence—Slander—Condition in life.*—The condition in life of the parties to a slander suit, is a proper subject of inquiry on the question of damages.—*Id.*

6. *Practice, civil—Trials—Slander—Evidence—Statements—Res gestæ.*—In an action of slander for charging plaintiff with stealing defendant's lumber, the declarations and acts of the plaintiff at the time of his taking the lumber are admissible in evidence, though the defendant was not present, as a part of the *res gestæ*.—*Id.*

7. *Practice, civil—Trials—Verdict—Slander—Crime—Plea of justification—What evidence required.*—In a slander suit for charging the plaintiff with the commission of a crime, wherein the defendant justifies the charge, the verdict must be for the plaintiff, if the jury have a reasonable doubt of the plaintiff's guilt.—*Id.*

8. *Practice, civil—Trials—Slander—Justification—Verdict—Preponderance of evidence.*—In an action of slander, when the answer justifies the language, the verdict should be in accordance with the preponderance of the testimony, as in other civil causes.—*Id.* Per SHERWOOD, Judge, dissenting.

9. *Practice, civil—Trials—Instructions—Slander.*— In an action of slander for charging the plaintiff with theft, an instruction to the jury to find for the defendant, if they find that the plaintiff, in person, or by agent, took away the property, is wrong, because it omits the essential ingredient of felonious intent. —*Id.*

10. *Practice, civil—Trials—Instructions, Confusing—Re-trial.*— When the instructions given on a trial must have confused and misled the jury, a new trial should be granted.—*Id.*

11. *Practice, civil—Pleadings—Bonds—Breaches—General verdict.*—A suit on an administrator's bond alleged several breaches in not paying over money collected. *Held*, that there was substantially but one breach,—the failure to pay over or account for money collected—and that a general verdict was proper.—State to use of Headlee v. Henslee, Adm'r of Schackelford, 518.

12. *Practice, civil—Special verdict—Judgment upon.*—On the finding of issues in the nature of a special verdict, the court has the undoubted right to render judgment.—White, Adm'r of Henly v. Henly, 592.

See Elections, 1; Equity, 2; Justices' Courts, 2; Slander, 1.

PRACTICE, CRIMINAL.

1. *Practice, criminal—Incest—Indictment, allegations of.*—In an indictment for incest with his daughter, it is not necessary to allege, that the defendant had carnal knowledge of the prosecutrix, knowing her to be his daughter.—State v. Bullinger, 142.

2. *Practice, criminal—Trial—Incest—Relationship, how proved.*—In trials for incest the relationship of the parties may be proved by reputation.—*Id.*

3. *Practice—Trials—Jury, separation of—New trials.*—The separation of the jury, even in criminal trials, is no ground for a new trial, when there is no ground to suspect that the jury has been tampered with.—Compton v. Arnold, 149.

4. *Practice, criminal—Trials—Calling the jury.*—The provision in the statute (W. S., 800, § 25,) that the clerk of the court in a criminal case shall call the jury to be impaneled, is directory.—State v. Holme, 153.

5. *Practice, criminal—Errors—Reversal.*—No error, that is not a violation of some positive rule of law, or which may not possibly prejudice the defendant, can be a ground for reversal on appeal.—*Id.*

6. *Practice, criminal—Trials—Errors—Impaneling the jury.*—In a criminal case the failure to call the first twelve names on the list for the jury, after the chal-

PRACTICE, CRIMINAL, continued.

lenges are exhausted, is a violation of the statute, (W. S., 800, § 25,) and the defendant having objected at the time to the course pursued, is a substantial error, and the case must be reversed.—*Id.*

7. *Practice, criminal—Instructions—Reversal.*—A cause will not be reversed, although unobjectionable instructions were refused, if those given completely covered the case.—*Id.*

8. *Practice, criminal—Murder—Malice—Presumption—Statute, construction of.*—Unless the circumstances from which the jury may presume malice, are proved, the law will presume under the statute (W. S., 445 § 1,) that the unlawful killing was murder in the second degree.—*Id.*

9. *Practice, criminal—Murder in the first degree.*—If the party killing had time to think, and did intend to kill, for a minute, as well as for an hour or a day, it is a deliberate, willful and premeditated killing, constituting the crime of murder in the first degree.—*Id.*

10. *Practice, criminal—Murder in the first degree—Malice, presumption of—Justification or palliation.*—As a general rule of law, every homicide is deemed malicious, unless it is shown that it was justified, excused or palliated; the proof of justification, excuse or palliation resting upon the accused, when the homicide is proven, unless evolved in the testimony produced by the accusing party.—*Id.*

11. *Practice, criminal—Defense of insanity—Question of fact.*—The defense of insanity in a criminal case is a question of fact for the decision of the jury. (State vs. Hundley, 44 Mo., 414.)

12. *Practice, criminal—Adultery—Killing wife or paramour—Mitigation.*—In order to mitigate to manslaughter the crime of killing the wife or her paramour by the husband, the husband must discover them in the act of adultery, unless the provocation was so recent and strong that he could not be considered at the time master of his own understanding.—*Id.*

13. *Practice, criminal—Unlawful killing—When reduced to manslaughter.*—In order to reduce the crime of unlawful killing of a person to manslaughter, the reason of the accused must at the time of the act be disturbed or obscured by passion to an extent, which might render a reasonable person liable to act rashly, without deliberation, and from passion rather than judgment, and generally, the provocation must occur in the presence of the injured party for then the law presumes that he acts upon sudden impulse.—*Id.*

14. *Practice, criminal—Trial—Imprisonment—Attempts to escape.*—In a criminal case, attempts to escape by the defendant after arrest are admissible in evidence.—State v. Williams, 170.

15. *Practice, criminal—Stolen property—Possession of.*—The recent possession of stolen property is presumptive evidence of the guilt of the possessor, and conclusive unless explained.—*Id.*

16. *Practice, criminal—Indictments—Perjury before grand jury—Averments—Jurisdiction over matters of inquiry.*—In an indictment for perjury before a grand jury, it is not necessary to allege that the grand jury had jurisdiction over the subject matter of the inquiry. (W. S., 477, § 7.)—State v. Keel, 182.

17. *Practice, criminal—Indictments—Venue.*—It is not necessary to state any venue in the body of an indictment. The venue stated in the margin is taken to be the venue for all the facts stated in the body of the indictment. (W. S., 1090, § 26.)—*Id.*

18. *Practice, criminal—Indictments—Perjury—Allegations—Materiality of testimony.*—In indictments for perjury, the facts, showing the materiality of the testimony, must be plainly and distinctly set forth.—*Id.*

19. *Practice, criminal—Evidence—Confessions, when inadmissible*—The officers of the law went to A. and told him that all they wanted was to recover the goods stolen, and if he would tell them where they were, so that they could get them, that that would be the end of the matter, and nothing further would be done. A. informed them, whereupon he was arrested, and was convicted on this con

PRACTICE, CRIMINAL, continued.

fession. *Held*, that this confession was involuntary, being induced by the flattery of hope and a promise of immunity from prosecution, and was inadmissible in evidence.—State v. Hagan, 192.

20. *Practice, criminal—Continuances.*—Applications for continuances are addressed to the sound discretion of the court trying the cause, and an appellate court will not interfere, unless such discretion appears to have been used unsoundly or oppressively.—State v. Burns, 274.

21. *Practice, criminal—Continuances—Affidavits—Due diligence.*—Where an affidavit was filed for a continuance in a criminal cause on the ground of the absence of witnesses, and it appeared that three continuances had been granted, and that the only subpœnas issued were issued on two occasions two days before the cause was set for trial, and the witnesses were not found: *Held*, that due diligence had not been exercised.—*Id.*

22. *Practice, criminal—Continuances—Newly discovered witnesses.*—An affidavit for a continuance, on the ground of the absence of parties discovered to be witnesses just prior to the trial, should be examined with rigid scrutiny.—*Id.*

23. *Practice, criminal—St. Louis county—Venire from the county—How summoned.*—The jury act for St. Louis county is peculiar, and does not contemplate the summoning of a jury from the county, consequently in a criminal cause it is competent for the marshal to summon such a jury, without receiving a list of the jurors from the jury commissioner.—*Id.*

24. *Practice, criminal—Application for change of venue—When applied for.*—An application for a change of venue in a criminal cause comes too late when the cause is called for trial, no previous notice having been given of the proposed application.—*Id.*

25. *Practice, criminal—Evidence—Confessions.*—In order that a confession may be received in a criminal case, it must be voluntary; it will be excluded, if it was induced by a promise of benefit or favor, or threat of intimidation or disfavor, by a person having authority in the matter.—State v. Jones, 478.

26. *Practice, criminal—Confessions—Admissibility of.*—When a confession has once been obtained by means of hope or fear, subsequent confessions are presumed to come from the same motive, and are inadmissible, unless it is shown that the original motives have ceased to operate.—*Id.*

27. *Practice, criminal—Confessions—Artifice.*—Confessions are not inadmissible because produced by artifice; *e. g.*, by persuading the prisoner, that his accomplices were in custody, or that they had divulged the facts relative to the crime.—*Id.*

28. *Criminal law—Corpus delicti—Confession, without other proof of.*—A conviction of murder is not warranted when there is no other proof of the *corpus delicti* but the uncorroborated confession of the accused.—State v. German, 526.

See Crimes and Punishments.

PRACTICE, SUPREME COURT.

1. *Practice, civil—Chancery cases—Issues referred to jury—Whether their verdict can be examined in Supreme Court.*—The verdict of a jury, upon issues referred to it by the court in a chancery case, is not properly reviewable in the Supreme Court. The lower court may disregard the verdict, and decide upon the issues, or may refer them to another jury. (W. S., 1041, § 13.)—Weeke v. Senden, 129.

2. *Practice, civil—Exceptions—Reversal.*—Where no exceptions are taken to the rulings of the lower court, this court will not reverse the case on the ground of such rulings.—Berry v. Smith, 148.

3. *Practice—Supreme Court—General judgment on all the counts—New trial, motion for—Reversal.*—The Supreme Court will not reverse a cause, because a general judgment on all the counts was rendered for the plaintiff, when such objection was not brought before the lower court in the motion for a new trial.—Fickle v. St. L., K. C., & N. R. R. Co., 219.

PRACTICE, SUPREME COURT, continued.

4. *Objections—Grounds of, not specified or mentioned in motion for new trial—Effect of omission.*—Where the grounds of objection are not specified, and the attention of the court is not called to them, in motion for new trial, they will not be regarded by the Supreme Court.—Curtis v. Curtis, 351.

5. *Stare decisis—Rule, when binding.*—This court will hesitate to interfere with previous adjudications, where on the faith of such decisions property has been acquired or money invested.—State, *ex rel.* Dobbins v. Sutterfield, 391.

6. *Equity suits—Instructions in, improper.*—In equity suits, declarations of law are not proper, and if given will be disregarded by this court.—Gill v. Clark, 415.

7. *Non-suit in equity will not bring law and fact up to the Supreme Court.*—A non-suit with leave to move to set it aside, will bring before the Supreme Court the questions of law and fact passed upon by the trial court, only when the non-suit is taken in a case at law. In equity cases the court below must adjudicate upon the law and the facts in order to bring them up on appeal or writ of error.—*Id.*

See Equity, 5; Practice, civil—New Trials; Practice, criminal, 4, 5, 6, 7.

PRESBYTERIAN CHURCH.

1. *Presbyterian church—General Assembly—Decree against signers of "Declaration and Testimony"—Effect of—Property rights—Exscinded congregation carries with it property conveyed in trust for its use.*—The decree rendered by the General Assembly of the Presbyterian church against the signers of the "Declaration and Testimony" which declared them to be incapable of sitting in any church judicatory higher than a session, did not excommunicate them as church members, or depose them from their ministerial office nor in any manner treat them as individual members of the church or congregation; and where property had been conveyed to be held for the use of a congregation, that is, for the members of the church composing the congregation, and such church had been cut off by such decree, the property was cut off with them. They could only cease to be members by voluntarily withdrawing or by excommunication, and this decree did not accomplish either their withdrawal or excommunication; and under such conveyance, there was no such implied condition of adherence to the general organism as should work a forfeiture or transfer of property to a new congregation when such adherence is dissolved, not by the direct action of the local body, but by that of the superior judicatory, and without any of the forms of judicial inquiry or trial.—Watson v. Garvin, 353.

Per Adams, Judge; Napton, Sherwood and Vories, J. J., concurring; Wagner, J., dissenting.

2. *Presbyterian church (Old School)—General Assembly—Deliverance on subject of slavery and loyalty—Competency of—Declaration and Testimony, signers of—Decree against, invalid—Property rights, not affected by.*—Under § 4 of the constitution of the Presbyterian church (Old School) which provides, that "Synods and councils are to handle or conclude nothing but that which is ecclesiastical; and are not to intermeddle with civil affairs which concern the commonwealth, unless by way of humble petition in cases extraordinary; or by way of advice for satisfaction of conscience, if they be thereunto required by the civil magistrate," the General Assembly of that church was prohibited from making deliverances on the subject of slavery and loyalty and the obligations of the church in that regard, and such deliverances were therefore nullities as far as property rights are concerned; and the decree rendered by the General Assembly, declaring that the signers of a paper called the Declarations and Testimony," inveighing against such "deliverances," "should not be allowed to sit in any church judicatory, higher than a session, and that if they or any of them should be enrolled as entitled to a seat in any Presbytery, such Presbytery, should, *ipso facto* be dissolved, and

PRESBYTERIAN CHURCH, continued.

the members adherring to the General Assembly were thereby authorized and directed to take charge of the Presbyterial records—to retain the name, and exercise all the authority and functions of the original Presbytery until the next meeting of the General Assembly," was also, as far as property rights were affected, a nullity.—*Id.*

3. *Ecclesiastical and civil courts—Relative jurisdiction—Property rights.*—Civil courts do not interfere with the decrees of ecclesiastical courts when no property rights are involved, because the civil courts have no jurisdiction in such matters and cannot take cognizance of them at all, whether they have been adjudicated by those tribunals or not. But when property rights are concerned the ecclesiastical courts have no power whatever to pass on them so as to bind the civil courts. If a member of the church feels himself aggrieved in his rights of property by the action of an ecclesiastical tribunal, he may resort to the civil courts, and they will not consider themselves precluded by the judgment of this tribunal.—*Id.*

PRESUMPTION; See Elections, 1; Limitations, 2; Practice, criminal, 8; Railroads, 4, 5.

PROTEST; See Bills and Notes.

PUBLICATION; See Practice, civil, 3.

Q.

QUO WARRANTO; See Bonds, railroad, 5.

R.

RAILROADS.

1. *Railroads—Brakeman, injuries to—Station agents—Conductors—Services of physicians.*—Station-agents and conductors of a railroad are not authorized, by virtue of their positions, to employ a physician at the expense of the railroad to attend to one of its brakemen injured by its cars.—Tucker v. St. L., K. C. & N. R. R. Co., 177.

2. *County Court—Railroads—Subscription before articles filed—Collector, action against.*—A subscription of stock ordered by a county court to a railroad company, before its articles of association have been executed or filed with the Secretary of State, is illegal and void. But where the county court orders the levy of a tax to meet the subscription, and the collector proceeds to enforce its collection, a tax-payer cannot have his action to recover back the amount so collected from him. His remedy is by proceeding to arrest the execution of such illegal subscription, and the State may, through her legal representatives, arrest the issue of the bonds.—Rnby v. Shain, 207.

3. *Railroads—Injuries to cattle—Double damages—Statute, construction of—Who to be plaintiff.*—In a suit against a railroad for double damages for injuries to cattle, brought under the statute (W. S., 310, § 43), the party injured is the proper plaintiff. [Hudson vs. St. Louis, K. C. & N. R. R., 53 Mo., 525, affirmed.] Fickle v. St. L., K. C. & N. R. R. Co., 219.

4. *Railroads—Killing of cattle—Lack of fences—Presumption.*—If a person's cattle are killed on a railroad track, where the track passes through his inclosed field, at a point which was not a public crossing and where there was no fence, the presumption is, unless the circumstances of the case rebut it, that the cattle, strayed on the track on account of the absence of the fence [Aubuchon vs. St. Louis & I. M. R. R., 52 Mo., 522].—*Id.*

5. *Practice, civil—Trials—Evidence—Railroads—Killing cattle—Presumptions*—When it is shown in evidence, that cattle were killed by a railroad company where their track passed through uninclosed prairie land, and where the track was not fenced, and where there was no road-crossing, the law presumes negligence on the part of the company.—Lantz v. St. Louis, K. C. & N. R. R. Co., 228.

RAILROADS, continued.

6. *Justices' courts—Railroads—Statement—Jurisdiction—Surplusage.*—In a suit against a railroad before a justice of the peace, the statements filed stated the cause of action and claimed $50 damages, and afterwards asked double damages "in accordance with the statute in such cases made and provided." *Held*, that the request for double damages might be disregarded as surplusage, and that the justice had jurisdiction of the cause.—Grau v. St. L., K. C. & N. Rly. Co., 240.

7. *Railroads—Accidents—Damages by cattle—Statement of cause of action—Double damages—Statute, construction of.*—In a suit for damages by a railroad, it appeared by the allegations and evidence, that one of its trains was wrecked, where the track ran through plaintiff's field; that there was no fence along the track; that the hogs and cattle in the train were necessarily turned into the field in the attempt to extricate them from the wreck; that they were collected together and driven away, and that while in the fields they damaged the crops. There was no allegation that the damage was caused by the failure of the railroad to construct or maintain fences or cattle-guards, as required by law. *Held*, that in such case the statute (W. S., 310-11, § 43) did not contemplate the allowance of double pamages.—*Id.*

8. *Railroads—Lands, condemnation of—Substantial compliance with the law.*—When the law, concerning condemnation of lands for railroads (Wagn. Stat., 326, Art. 5), is substantially complied with, and a sufficient certainty is used to prevent surprise, or so much as not to mislead, it is all that the law requires.—The Q., M. & P. R. R. Co. v. Kellogg, 334.

9. *Railroads—Lands, condemnation of—Notice to owners.*—A notice to parties of proceedings to condemn their land for railroads (Wagn. Stat., 327, § 2), which informs them that commissioners are to be appointed to assess damages to them accruing from the passage of the road over their lands, describing the lands, is sufficient, inasmuch as they cannot be mislead.—*Id.*

10. *Railroads—Lands, condemnation of—Petition for—Report of commissioners—Description of land.*—A petition for the condemnation of lands for a railroad (Wagn. Stat., 326-7 § 1,) stated, that the railroad had been finally located through the land of the defendant, and that stakes had been driven along the centre of the track where it passed over his land, that the strip intended to be occupied was 100 feet wide running in a north west direction across his land (giving the numbers of the land according to the Government surveys), and that a profile and plat of the road as located had been made and filed in the office of the clerk of the county. The report of the commissioners followed the description in the petition, and referred to the profile and plat filed as furnishing a more specified description. *Held*, that the description was sufficient.—*Id.*

11. *Statute, construction of—Lands, condemnation of, for railroads—Joinder of defendants.*—The provision of the Statute (Wagn. Stat., 328, § 5) authorizing the joinder, as defendants, of those persons living in the same County or Circuit, in proceedings to condemn lands for railroads, is equivalent to saying that other persons, not residing in said County or Circuit, cannot be joined with them.—*Id*

12. *Railroads—Lands, condemnation of—Improper joinder—Estoppel.*—If a party improperly joined with others in proceedings to condemn lands for railroads, should appear and take any steps in the case without objecting to such misjoinder, or should, after the damages were assessed, receive the amount assessed he might be estopped from objecting to the validity of the proceedings.—*Id.*

13. *Railroad companies—Responsibility of, for dog left with baggage master.*—The owner having a dog on a railroad train, being informed by a brakeman and the baggage master, that the animal was not allowed in the passenger car, placed him in charge of the baggage master, and paid the latter for his transportation. By the regulations, which were posted and printed at the various stations, "live animals" were "allowed as baggagemen's perquisites." No special notice of this rule was brought home to the owner. Company held liable for loss of the dog by the baggageman.—Cantling v. Han. & St. Joe. R. R. Co., 385.

RAILROADS, continued.

14. *Railroads—Claim for wages due from contractors—Notices—Statute, construction of.*—A notice to a railroad, that a contractor on their road is in arrears to his hands, which substantially complies with the statute (Wagn. Stat., 302, § 40), so as to prevent any misapprehension, is sufficient.—Cosgrove v. Tebo & N. R. R., 495.

15. *Railroads—Contractors—Accounts of laborers—Admissions.*—The account of a laborer for work on a railroad under a contractor, signed by the contractor, is not evidence against the railroad company as its admission, unless the authority to make such admissions is established.—*Id.*

See Bonds, Railroad.

RAILROAD, ALEXANDRIA & BLOOMFIELD; See Bonds, Railroad, 3.

REGISTRATION: See Elections, 1, 2, 3.

RES GESTÆ; See Evidence, 13.

REVENUE.

1. *Practice, civil—Money had and received—Suit against collector of taxes for money received by him for taxes.*—A. sued by B. for money had and received by B. to A.'s use. The only evidence in the case was, that B. was the collector of taxes, and as such received this money in payment of A.'s taxes. *Held*, that after the reception of this money by B. it no longer belonged to A., but to the state and county, and that A. had no standing in court.—Davis v. Bader, 168.

2. *Taxes—Collector's failure to credit payment—Twice paid—How recovered back.*—If B. the collector, returns A.'s taxes as delinquent when he has paid them, and A. has been compelled to pay them twice, it may be, that A. may recover them back from B., or be substituted to the rights of the state and county.—*Id.*

3. *Railroads, subscription to—Bonds, taxes to pay interest on—County Court—Railroad—The State as plaintiff.*—In a suit to enjoin the collector from collecting taxes levied to pay the interest on bonds (alleged to be illegal) issued to a railroad, the county court who issued the bonds and levied the tax, and the railroad should be made parties thereto. The State through its proper officers can bring such suits.—The State of Missouri *ex rel.*, Robinson v. Sanderson, 203.

See Forest park, 1, 4; Railroads, 2.

ROADS.

1. *Public roads, opening of—County Courts—Circuit Court, appeal to—Re-examination.*—In proceedings to open public roads, the circuit court, on appeal from the county court, shall proceed to hear and try the cause anew.—(Sess. Acts 1872, p. 146, § 50; p. 148, § 71.)—Jefferson county v. Cowan, 234.

2. *Inferior courts, circumscription of their powers—County Courts—Opening public roads—Petition.*—Inferior courts, and those of statutory origin, must be circumscribed within the confines of the statute, which gives them being. Hence, where a petition to the County Court, praying that a public road be opened, does not show that it was signed by at least twelve householders of the township or townships in which said road is desired, three of whom were of the immediate neighborhood, as required by statute, (Sess Acts 1872, p. 140, § 8), the County Court has no jurisdiction in the premises. *Id.*

S.

ST. LOUIS, CITY OF.

1. *Social evil ordinance of St. Louis valid—General law repealed by charter.*—The power given to the city council of St. Louis, under the municipal charter of 1870, Art. III, § 1, (Sess. Acts 1870, 463–4) "by ordinance not inconsistent

ST. LOUIS, CITY OF, continued.

with any law of the State," ** "to regulate bawdy houses," operated as a repeal of the general statute prohibiting them, in respect to the city of St. Louis. And a city ordinance licensing them is valid, under the charter, notwithstanding the general inhibition of the statute, and a license taken out in conformity with the ordinance will shield them from criminal proceedings by the state. Such ordinance is not void as against public policy or good morals. The best indication of public policy is to be found in the action of the legislature. And there is no warrant to suppose that the law had any other purpose than the promotion of morality and health to the citizens.—The State of Missouri v. Clarke, 17.

2. *Constitution—Law unconstitutional in part, not wholly void.*—Unconstitutional provisions of a law do not render it void as to other and independent provisions.—*Id.*

PER J. VORIES, DISSENTING, SHERWOOD J., CONCURRING.

3. *St. Louis charter, granting authority to regulate brothels, not a repeal of general law.*—§ 19, Art. VIII, Ch. 42 of Statutes of Missouri (W. S., 502), prohibiting bawdy houses, is not repealed by the Charter of the city of St. Louis of 1870, Art. III, § 1. (Sess. Acts 1870, 463-4.) The general law prohibiting and the special law regulating brothels are not inconsistent.—*Id.*

ST. LOUIS COUNTY; See Practice, criminal, 23.

SALES; See Administration, 9; Fraudulent conveyances, 1, 2; Mortgages and Deeds of Trust, 1, 2; Sheriff's sales.

SALES, JUDICIAL; See Sheriff's sales; Trusts and Trustees, 2.

SEAL; See Bonds, judicial, 2, 3; Contracts, 3, 4.

SERVICE; See Evidence, 3; Justices' Courts, 1; Practice, civil, 1, 2, 3.

SET-OFF; See Administration, 10.

SHERIFF; See Practice, civil, 1, 2; Sheriffs' sales.

SHERIFFS' SALES.

1. *Sheriff's deeds—Recitals—Judgments—Executions.*—A sheriff's deed set out fully certain judgments, and also set out certain executions, but failed to couple the executions with the judgments, but the names of the parties and the amounts, as set out, were identical. *Held*, that it was inferrable that the executions were on these judgments, and that such omissions are not fatal to the deed, inasmuch as they could mislead no one.—Wack v. Stevenson, 481.

2. *Sheriff's sales—Executions, expiration of—Venditioni exponas.*—A sale by a sheriff under a *venditioni exponas* on an execution, which may have expired, is void.—*Id.*

3. *Sheriff's sale—Purchase at by party to judgment—By stranger—Reversal of judgment—Effect of.*—Where plaintiff in a judgment purchases at the execution sale, his title will be forfeited by a subsequent reversal of the cause. (See Holland *vs.* Adair, 55 Mo., 40.) But the title of a stranger, who purchases in good faith from said plaintiff in the judgment, and before the reversal of the same, will not be invalidated by such reversal.—Vogler v. Montgomery, 577.

4. *Homestead exemption—Construction of statute.—Claim not made by housekeeper—Fraudulent conveyance by.*—Under § 2 of the act concerning Homesteads, (Wagn. Stat., 697.) where a homestead is claimed, the sheriff cannot proceed with his levy, until he has ascertained by appraisers, in the mode directed by the act, the extent and value of the premises, and that they are beyond the limit protected against executions. And the claim is not lost when not asserted by the housekeeper or head of the family, or by reason of the fact that he had theretofore fraudulently conveyed away the property.—*Id.*

See Landlord and tenant, 1.

SLANDER.

1. *Slander—Words spoken in Dutch set out in English, etc.*—In slander when the petition charges that the words alleged to be slanderous were spoken in the

SLANDER, continued.

Dutch language, but only the English translation is set out, if defendant answers over, he cannot object at the trial to the introduction of evidence on the ground that the petition does not state facts sufficient to constitute a cause of action.—Elfrank v. Seiler, 134.

2. *Practice, civil—Slander—Trials—General verdict—Several Counts.*—In an action for slander, the petition containing several counts, a general verdict is proper, when the several counts contain the same slander uttered at different times.—Polston v. See, 291.

3. *Practice, civil—Trials—Evidence—Slander—Condition in life.*—The condition in life of the parties to a slander suit, is a proper subject of inquiry on the question of damages.—*Id.*

4. *Practice, civil—Trials—Slander—Evidence—Statements—Res gestæ.*—In an action of slander for charging plaintiff with stealing defendant's lumber, the declarations and acts of the plaintiff at the time of his taking the lumber are admissible in evidence, though the defendant was not present, as a part of the *res gestæ*.—*Id.*

5. *Practice, civil—Trials—Verdict—Slander—Crime—Plea of justification—What evidence required.*—In a slander suit for charging the plaintiff with the commission of a crime, wherein the defendant justifies the charge, the verdict must be for the plaintiff, if the jury have a reasonable doubt of the plaintiff's guilt.—*Id.*

Per SHERWOOD, Judge, dissenting.

6. *Practice, civil—Trials—Slander—Justification—Verdict—Preponderance of evidence.*—In an action of slander, when the answer justifies the language, the verdict should be in accordance with the preponderance of the testimony, as in other civil causes.—*Id.*

7. *Practice, civil—Trials—Instructions—Slander.*—In an action of slander for charging the plaintiff with theft, an instruction to the jury to find for the defendant, if they find that the plaintiff, in person, or by agent, took away the property, is wrong, because it omits the essential ingredient of felonious intent.—*Id.*

SPECIFIC PERFORMANCE; See Equity, 6; Frauds, Statute of, 2; Practice, civil—Pleading, 1.

STAMP; See Evidence, 6.

STATUTE, CONSTRUCTION OF.

1. *Statutes—Constitutionality of—Minors declared of age.*—It is too late now to question the constitutionality of an act of the legislature passed prior to 1865, declaring a minor of age and legally competent to transact his own business.—Shipp v. Klinger, 238.

2. *Statute—Construction of—Offenses—Parties designated as offenders—Liability of others.*—When a statute defining an offense designates one class of persons as subject to its penalties, all other persons are to be deemed as exonerated.—Howell v. Stewart, 400.

ADMINISTRATION, 10, (W. S., 1274, § 3).
ATTACHMENT, 1, (W. S., 189, § 42).
BONDS, RAILROAD, 3, (Sess. Acts, 1856-7, 94, § 11; Sess. Acts, 1861, 60, § 1) 6, 7, 9, 10, 11.
CORPORATIONS, 2, (W. S., 294, §§ 26, 28).
COUNTY-SEATS, REMOVAL OF, 1, (W. S., 405, § 22).
DAMAGES, 1, (W. S., 520, § 4).
DOWER, 1, 2, (W. S., 542, § 20); 3, (W. S., 539, § 5; W. S., 88, §§ 35, 36, 37).
ELECTIONS, 4, (W. S., 574, § 58).
EVIDENCE, 2, (W. S., 1372, § 1;) 7, (W. S., 519, § 2).
HOMESTEAD, 1, (W. S., 697, § 2).

STATUTE, CONSTRUCTION OF, continued.

JUSTICES' COURTS, 1, (W. S., 839, § 15).
LANDLORD AND TENANT, 1, (W. S., 642, § 3;) 2, (W. S., 880, § 15).
LIMITATIONS, 7, (W. S., 917, § 7).
PRACTICE, CIVIL—TRIALS, 2, (W. S., 1041, § 13).
PRACTICE, CRIMINAL, 4, 6, (W. S., 800, § 25;) 8, (W. S., 445, § 1;) 16, (W. S., 477, § 7;) 17, (W. S. 1090, § 26).
RAILROADS, 3, (W. S., 310, § 43;) 7, (W. S., 310–11, § 43;) 8, 9, 10, (W. S., 326–7, §§ 1, 2;) 11, (W. S. 328, § 5;) 14, (W. S., 302, § 10).
ROADS, 1, (W. S., 146–8, §§ 50, 71;) 2, (W. S., 140, § 8).
ST. LOUIS, CITY OF, 13, (Sess. Acts, 1870, 463–4, Art. III, § 1;) 3, (W. S., 502, § 19).
WILLS, 4, (W. S., 1365, § 9;) 5, (W. S., 1370, § 47).

STOCK-HOLDER; See Corporations, 1.

STOLEN PROPERTY; See Practice, criminal, 15.

STREETS; See Damages, 3.

SUBSCRIPTION; See Bonds, Municipal, 1, 2; Bonds, Railroad, 3, 4, 6, 7, 9, 10, 11; Railroads, 2.

SUMMONS; See Corporations, 6; Justices' Courts, 1.

SURETIES; See Administration, 8, 10; Infancy, 4.

SURPRISE; See Practice, civil—New Trials, 2, 3.

T.

TRUSTS AND TRUSTEES.

1. *Trusts and Trustees—Limitations, statute of—Claim of title by trustee independent of the trusts.*—When a trustee denies the trust and openly claims the trust property by a title independent of the trust and adversely to the claim of the beneficiary, the statute of limitations will run in his favor.—Poe v. Domic, 119.

2. *Trusts and trustees—Redemption—Acceptance of part of land in satisfaction.*—Where a party at a judicial sale constitues himself a trustee, by deterring others from bidding, and the party entitled to redeem accepts a deed for part of the land tendered in satisfaction, it amounts to a bar to further redemption.—Bedford v. Moore, 448.

See Fraudulent conveyances, 1; Mortgages and Deeds of Trust.

U.

UNDUE INFLUENCE; See Frauds, Statute of, 2.

UNITED STATES COURTS; See Courts, United States.

V.

VENDOR'S LIEN; See Lien, vendor's.

VENUE; See Practice, criminal, 17, 24.

VERDICT; See Practice, civil—Trials, 11, 12.

VESTED ESTATE; See Wills, 5.

W.

WILLS.

1. *Wills—Probate—Administrator, appointment of—Proofs—When contested.*—The appointment by the court of the executor named in the will, or, in case of his renunciation, of such person as the statute authorizes, as administrator

WILLS, continued.

with the will annexed, assumes, that the court has passed upon the sufficiency of the proofs and admitted the will to probate. But this assumption may be contested by the proper parties in due time.—Lackland, Adm'r v. Stevenson, 108.

2. *Wills—Probate—Wife, renunciation by—Sale of lands—Estoppel.*—A. made his will, appointing his wife executrix, but she by a written communication to the court declined to act, when an administrator with the will annexed was appointed by her consent and at her request, and the order appointing him recited that the will had been duly probated. The will was proved by the subscribing witnesses, and no objection was made to the sufficiency of the proof. It appeared by parol proof, that the widow was informed of her right to renounce the will, but declined to do so. The entry of the clerk of the court was, that the will had, "in due form of law, been exhibited, proved and recorded;" but there was no entry of any formal judgment of probate. Five years after the death of the testator the land conveyed in the will to the wife was sold by the administrator by order of court to pay the debts of the estate, and, seven years after the sale, the wife renounced the will and sued for dower in the land. *Held,* that the conduct of the wife amounted to an estoppel *in pais.—Id.*

3. *Executors—Deed—Subsequent probate of will.*—A will giving power of sale vests the title in the executor at the time of the testator's death, and his deed of the property, made before probate of the will, is a good conveyance, provided the will be subsequently probated.—Wilson v. Wilson, 213.

4. *Wills—Son not mentioned—Subsequent death—Son's widow—Vested estate—Statute, construction of.*—A. died, leaving a will wherein he neither mentioned nor provided for his son B. B. subsequently died, leaving a widow. *Held,* that A. died intestate as to B. (Wagn. Stat., 1365, § 9), and that the right and title of B. in the estate of A. became a vested interest on the death of A., and upon B.'s death passed to his representatives.—Schneider v. Koester, 500.

5. *Wills—Intestacy as to a child—Share, how obtained—Practice, civil.*—When a testator fails to mention or provide for one of his children in his will, the will is not invalid, and a suit to have the will set aside is not the proper remedy, but the testator dies intestate as to such child, and, if necessary, he can resort to § 47 of the chapter concerning Wills. (Wagn. Stat., 1370.)—*Id.*

See Administration, 5, 6; Dower, 3.

WITNESSES; See Evidence.